REMARKS/ARGUMENTS

Claims 1-49 and 58-70 are pending in the current application and stand rejected. Claims 50-57 are herein cancelled. Claims 71-74 were previously cancelled for being drawn to a non-elected invention. Applicant has added new claims 75-91 to more clearly recite aspects of the invention. Support for such new claims can be found in the originally filed specification including the claims and examples. As such, no new matter has been added. Applicant has also amended the specification at paragraph [00167] to correct an unintentional typographical error. Such error is obvious in light of the context therein, and do new matter has been added. Entry of the foregoing and further consideration of the subject application in light of the remarks that follow and consistent with 37 C.F.R. 1.111 are respectfully requested.

Claims 1-49 and 58-70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Weng et al. (U.S. Patent No. 6,225,432; hereafter "Weng"). The Examiner states "Weng discloses branched polypropylene compositions which have improved melt strength wherein the melting points are greater than 90°C." The Examiner further states that Weng discloses "one or more metallocenes." The Examiner then concludes, "Although Weng does not disclose all the characteristics and properties of the branched polypropylene disclosed in the present claims, based on the substantially identical process using substantially identical catalysts and co-catalysts and the close relationship between 'heat of fusion' and melting point, the Examiner has a reasonable basis to believe that the properties claimed in the present invention is [*sic*] inherent in the branched polypropylene disclosed by Weng."

Applicant respectfully traverses the rejection on grounds that the Examiner has not established a *prima facie* case of obviousness. Weng makes no mention of polypropylene homopolymer having a unimodal molecular weight distribution, as required in every claim. In fact, Weng makes no mention of the modality of a molecular weight distribution (MWD) for the polymers disclosed therein. As such, a unimodal MWD is not obvious in view of Weng and certainly not "inherent" in Weng. For at least this reason, withdrawal of the rejection and allowance of the claims is respectfully requested.

Moreover, Weng is not an enabling disclosure that can support a 35 U.S.C. § 103 obviousness rejection. Weng makes no mention of the modality of the MWD. Insofar as the record shows, if it is known that a crystalline polypropylene homopolymer having a unimodal molecular weight distribution can be made from combining two or more different metallocene catalyst compounds, it has been gleaned from the Applicant's own specification. Such is nothing short of hindsight reconstruction. Unsupported legal conclusions and impermissible hindsight may not provide a proper basis to support a rejection based on *prima facie* obviousness. Therefore, the Examiner erred in rejecting the claims under 35 U.S.C. §103(a).

Moreover, the Examiner is kindly reminded that the Examiner has the burden to provide the suggestion of the desirability of combining or modifying references to yield the claimed invention. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (B.P.A.I. 1985); MPEP §2142. Here, the examiner has proffered that there is a "reasonable basis to believe that the properties claimed in the present invention is [*sic*] inherent in the branched polypropylene disclosed by Weng." Such conclusion is not based on the teaching of the prior art nor what was known by one skilled in the art at the time of filing the claimed invention. Therefore, the rejection under 35 U.S.C. §103(a) is improper.

There is no reasonable basis to believe that the properties claimed in the present invention are inherent in the branched polypropylene disclosed by Weng. Neither the heat of fusion nor the melting point of a polymer is determinative or dependent on the modality of the polymer's MWD. For example, Mehta et al. (US Patent No. 6,583,277) discloses crystalline propylene homopolymer having a melting point above 100°C that were made by two or more metallocences. Such polymers had a bimodal MWD. Also for example, Samples 1, 2, 4-6 and 11-13 of Applicant's specification produced polymer using similar catalyst in a similar process and had similar heats of fusion and melting points, but did not have unimodal MWDs. In other words, the modality of a polymer's MWD cannot be readily deduced based on heats of fusion and melting temperatures alone. In addition, the Examiner

has provided no prior art on the record to show that branched crystalline polypropylene homopolymer can be prepared in a polymerization process by combining two or more different metallocene catalyst compounds, as required in every claim. Accordingly, the Examiner erred by concluding there is a "reasonable basis to believe that the properties claimed in the present invention is [*sic*] inherent in the branched polypropylene disclosed by Weng. Withdrawal of the rejection and allowance of the claims is respectfully requested.

Applicant further traverses the rejection on grounds that the Examiner's basis of rejection is simply an "obvious to try" standard which the Court of Appeals for the Federal Circuit has held not to be a proper test for determining obviousness under 35 U.S.C. § 103. *See In re O'Farrell*, 7 U.S.P.Q. 2d 1673 (Fed. Cir. 1988). An invention is merely "obvious to try" if the prior art gives either no indication of which parameters are critical or no direction as to which of many possible choices is likely to be successful. *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843 (Fed. Cir. 1989). As mentioned above, Weng makes no mention of modality, single, bi- or other. Since there is no teaching, showing, or suggestion within Weng to provide polypropylene homopolymer having a unimodal molecular weight distribution as recited in the claims, the claimed invention is not obvious in light of Weng. Withdrawal of the rejection is requested.

Notwithstanding the foregoing, the present invention provides surprising and unexpected results. As stated a paragraph [00167] of the Applicant's specification:

> The samples were characterized using ^{1}H NMR, DSC, and GPC methods. Samples 7-10 had high M_w valves and broad molecular weight distributions. Samples 7-10 also had high melting points, high polydispersities, and fewer vinyl chain-ends than would be expected as an average of the two separately catalyzed polymerization products. Samples 7-10 each had a unimodal molecular weight distribution. Surprisingly, Sample 7 had a unimodal molecular weight distribution, even though Sample 7 was made using one of the same catalysts found in Sample 6 (single catalyst), which was observed to have a bimodal molecular weight distribution.

See, specification at para. [00167]. For at least these reasons of surprising and unexpected results, the claimed invention is not obvious in light of Weng. Withdrawal of the rejection is requested.

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CONCLUSION

It is respectfully submitted that all pending claims are in condition for allowance. Accordingly, Applicants request early and favorable reconsideration in the form of a Notice of Allowance.

If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2002B147/2).

Respectfully submitted,

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Date

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